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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California
corporation,

Plaintiff,

v.

GIGANEWS, INC., a Texas
corporation; LIVEWIRE
SERVICES, INC., a Nevada
corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO. '11CV0905 H MDD

COMPLAINT FOR:

**(1) COPYRIGHT INFRINGEMENT;
(2) TRADEMARK
INFRINGEMENT; (3)
TRADEMARK DILUTION (4)
UNFAIR COMPETITION; AND
(5) VIOLATION OF RIGHTS OF
PUBLICITY**

DEMAND FOR JURY TRIAL

1 Plaintiff Perfect 10, Inc. (“Perfect 10”) avers:

2 **JURISDICTION AND VENUE**

3 1. **Jurisdiction.** This action arises under the Copyright Act, 17 U.S.C.
4 § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.* This Court has
5 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331,
6 1338(a) and (b) and principles of supplemental jurisdiction.

7 2. **Venue.** Venue is proper in this judicial district pursuant to 28
8 U.S.C. § 1391 (b)(2), (c), and § 1400(a).

9 3. **Personal Jurisdiction.** Personal jurisdiction may be asserted over the
10 Defendants because the wrongful activity at issue concerns Defendants’
11 operation of commercial businesses through which Defendants knowingly
12 transact business and enter into contracts with individuals in California,
13 including within the County of San Diego. Specifically, Defendants contract
14 with California customers to sell monthly memberships for their services, which
15 include the illegal reproduction, distribution, and display of copyrighted
16 materials to California customers. Defendants also receive much of their
17 revenue from Visa, Inc., a corporation headquartered in California. Each of the
18 Defendants, therefore, has purposefully availed itself of the privilege of doing
19 business in California, and material elements of Defendants’ wrongdoing
20 occurred in this State.

21 **THE PARTIES**

22 4. Plaintiff Perfect 10 is a California corporation. Plaintiff published
23 the popular magazine PERFECT 10 and owns and operates the internet website
24 located at *perfect10.com*.

25 5. Defendants Giganews, Inc., (“Giganews”) owns, operates, hosts,
26 and/or controls the internet websites located at *giganews.com* and
27 *supernews.com* and has various advertising operations, data storage facilities,
28 and other businesses. It copies, reproduces, stores, distributes, displays, and

1 profits from unauthorized copyrighted materials, including large numbers of
2 pirated movies, songs, images, computer programs, and induces and assists
3 others to infringe copyrighted materials. Upon information and belief,
4 Giganews sells the infringing content on its giganews.com servers to one or
5 more of Defendant Livewire Services' websites who effectively acts as a
6 Giganews reseller: rhinonewsgroups.com, powerusenet.com, infinityusenet.com,
7 eurousenet.com, galacticgroups.com, cheapnewsgroups.com, fastusenet.com,
8 usenetgiant.com, and usenet.net. Giganews also hosts one or more of those
9 websites.

10 6. Defendant Livewire Services, Inc. ("Livewire") owns, operates,
11 and/or controls the Internet websites located at rhinonewsgroups.com,
12 powerusenet.com, infinityusenet.com, eurousenet.com, galacticgroups.com,
13 cheapnewsgroups.com, fastusenet.com, usenetgiant.com, and usenet.net, among
14 others. Livewire copies, reproduces, stores, distributes, displays, and profits
15 from unauthorized copyrighted materials, including large numbers of pirated
16 movies, songs, images, computer programs, and induces and assists others to
17 infringe copyrighted materials.

18 7. Ronald Yokubaitis ("Yokubaitis") is the Digital Millenium
19 Copyright Act ("DMCA") agent for giganews.com, nupernews.com, and all of
20 the infringing Livewire websites identified above. Yokubaitis is the Chairman
21 of Giganews.

22 8. The computer servers that store the infringing content and host all
23 of the websites identified above are owned and/or controlled by Giganews and
24 are located in Austin, TX at Data Foundry, Inc., which is controlled and/or
25 operated by Yokubaitis.

26 9. Does 1 through 100, inclusive, which are businesses owned or
27 controlled by Defendants either directly or indirectly, profit from and/or directly
28 or indirectly infringe or facilitate the infringement of Perfect 10 intellectual

1 property, are sued herein under fictitious names because their true names and
2 capacities are unknown to Perfect 10.

3 10. When Perfect 10 ascertains the Doe Defendants' true names and
4 capacities, it will seek leave to amend this complaint to insert such true names
5 and capacities. Perfect 10 is informed and believes, and on that basis avers, that
6 each Doe Defendant acted with Defendants and is responsible for the harm and
7 damages to Perfect 10 herein averred. Each of the Defendants and the Doe
8 Defendants are referred to hereinafter collectively as "Defendants."

9 11. The address of Livewire as listed on its DMCA filing at the U.S.
10 Copyright Office, is 1044 Liberty Park Drive, Austin, Texas 78746, which is the
11 same address listed for Data Foundry, Inc. and for Giganews. The Federal
12 trademark applications for usenet.net and Rhino Newsgroups list the address of
13 Livewire as Austin, TX 78746. Perfect 10 is informed and believes, and on that
14 basis avers, that at all times material herein, each of the Defendants acted under
15 common control and was the agent and/or employee of the other Defendants,
16 and, in doing the things herein averred, was acting within the course and scope
17 of such agency and employment.

18 12. Perfect 10 is informed and believes, and on that basis avers, that at
19 all times material herein, each of the Defendants knew about, and contributed to
20 each other's infringement. Both Defendants have attempted to conceal their
21 identities by registering their websites using Internet registration services that
22 hide the identity of the registered owner, and by failing to provide any contact
23 person, address or telephone number on their websites.

24 **THE BUSINESS OF PERFECT 10**

25 13. The business of Perfect 10 consists of the design, creation,
26 production, marketing, promotion, and sale of copyrighted adult entertainment
27 products, including photographs, magazines, video productions, and other
28 media.

1 14. Perfect 10 was the publisher of the well-known magazine
2 PERFECT 10, but was forced to close that magazine because of rampant
3 infringement.

4 15. Perfect 10 creates or created, and sells or sold, calendars and other
5 merchandise featuring its images, and was involved in the licensing of
6 downloads of images for cell phones, but is not currently earning revenue from
7 that endeavor because of rampant infringement.

8 16. Perfect 10 owns and operates the internet website *perfect10.com*.
9 Consumers are provided access to content owned by Perfect 10 and made
10 available by payment of a membership fee of \$25.50 per month.

11 17. Perfect 10's revenues are currently derived predominantly from
12 sales of memberships to its *perfect10.com* website. Sales of memberships to the
13 *perfect10.com* website are made by providing the customer with an individual
14 user name and password to access the website.

15 18. The Perfect 10 Copyrighted Works: Perfect 10 owns thousands of
16 valuable and unique copyrighted photographs, as well as video productions and
17 other proprietary materials, some of which are identified in Exhibit 1. As set
18 forth in Exhibit 1, a substantial number of the copyrighted photographs are
19 registered with the U.S. Copyright Office and others are pending registration.
20 Perfect 10 owns the copyrights in and to these works (the "Perfect 10
21 Copyrighted Works"). A few samples of the more than 15,000 Perfect 10
22 copyrighted images that Defendants have infringed are included as Exhibit 2.
23 Perfect 10 has invested, and continues to invest, substantial sums of money,
24 time, effort, and creative talent to make and produce the Perfect 10 Copyrighted
25 Works. In addition, in order to produce and sell the Perfect 10 Copyrighted
26 Works, Perfect 10 is required to make numerous payments, including but not
27 limited to model fees, photographer fees, location costs, styling costs, make-up
28 costs, printing costs, film and processing costs, travel costs, as well as

1 distribution, public relations, legal, and advertising and promotion costs.

2 19. The Perfect 10 Marks: Perfect 10 also is the owner of the valuable
3 and well-known Perfect 10 family of trademarks, including but not limited to
4 PERFECT 10, PERFECT10.COM, and P10 (the “Perfect 10 Marks”). These
5 marks are used in commerce by Perfect 10 on and in connection with the sale of
6 its products and services, including PERFECT 10 Magazine and *perfect10.com*.
7 Perfect 10 has spent millions of dollars advertising and promoting the Perfect 10
8 Marks and Perfect 10 products and services bearing these marks. Perfect 10 has
9 built and owns the valuable goodwill symbolized by the Perfect 10 Marks.
10 Three of Perfect 10's registered trademarks, registration numbers 2235145,
11 2202643, and 2573998, have become incontestable under Section 15 of the
12 Lanham Act, 15 U.S.C. Section 1065.

13 20. Goods and services bearing the Perfect 10 Marks have been
14 featured and/or talked about on numerous television and radio shows (including
15 *The Tonight Show*, *The Sopranos*, *The Amazing Race*, *Entourage*, *The Howard*
16 *Stern Show*, *Dawson's Creek*, *Battledome*, *Fox News*, *Hard Copy*, *Entertainment*
17 *Tonight*, *Extra*, *The Dating Game*, *Temptation Island*, *Monday Night Football*,
18 *Hannity & Colmes*, *The O'Reilly Factor*, *The View*, and *Jenny Jones*), in motion
19 pictures (including *Orphan*, *Superbad*, *Knocked Up*, *Spiderman*, *American Pie*,
20 *Hollow Man*, and *The Way of the Gun*), and in newspapers and periodicals.

21 21. The Perfect 10 Rights of Publicity: Perfect 10 contracts with
22 models in connection with its magazine and website. Perfect 10 secures
23 assignments from some of those models of their rights of publicity (the “Perfect
24 10 Rights of Publicity”). The Perfect 10 Rights of Publicity are valuable
25 because the identities, including the names and likenesses of these models are
26 well-known and popular and attract/attracted purchasers of PERFECT 10
27 magazine and visitors and subscribers to *perfect10.com*.

28 22. The success of Perfect 10's business is almost entirely dependent

1 on its intellectual property rights. Therefore, the ongoing and massive
2 infringements of Perfect 10's rights, as herein described, is devastating to, and
3 threatens the existence of, Perfect 10's business.

4 **THE BUSINESS OF DEFENDANTS**

5 23. Giganews operates the internet websites giganews.com and
6 supernews.com among others. Livewire operates the internet websites
7 rhinonewsgroups.com, powerusernet.com, infinityusernet.com, eurousenet.com,
8 galacticgroups.com, cheapnewsgroups.com, fastusernet.com, usenetgiant.com,
9 and usenet.net, among others. Livewire resells infringing content provided to it
10 by Giganews. Upon information and belief, Giganews hosts one or more of the
11 Livewire websites on its servers.

12 24. On each of the websites, Defendants sell to their customers for as
13 little as \$4.99 per month, access to their servers, which are virtual warehouses
14 containing billions of dollars worth of copyrighted works, including pictures,
15 movies, songs, and copyrighted software. Defendants purportedly copy all of
16 the materials on their servers from a global system of online bulletin boards
17 called the USENET. Each bulletin board on the USENET is commonly referred
18 to as a "newsgroup." Materials posted to the newsgroups (including copyrighted
19 materials such as pictures, songs, full-length movies, software) are called
20 "articles." Defendants allow users to search their massive collections of
21 infringing materials for specific files. For example, a user interested in Perfect
22 10's works might use the search term "Perfect 10," "P10," or the names of
23 Perfect 10 models. A user interested in the movie *Star Wars* would use the
24 search term "Star Wars." Users may choose to display the articles from the
25 Defendants' servers or can download the files directly to their own computer.

26 25. Defendants store the infringing materials on their servers. They
27 program their servers to distribute infringing content to other servers hosted by
28 other third parties. Defendants' servers, in turn, are programmed to copy

1 infringing materials from other third party servers. Defendants also control
2 which materials are distributed to and copied from other third party servers.

3 26. Whereas the USENET may have at one time contained significant
4 amounts of legal materials, most of the interest in the USENET is now centered
5 around material in the “alt.binaries.*” newsgroups, which consist almost
6 exclusively of pirated materials, including movies, songs, images, and computer
7 software. Categories under the alt.binaries hierarchy include “movies,”
8 “pictures” and “warez” (which refers to illegal copies of copyrighted works.).
9 On April 20, 2011, the alt.binaries.warez newsgroup contained 141,614,302
10 articles. 99% of the “articles” in the alt.binaries.* newsgroups are pirated
11 copyrighted works. A number of internet service providers such as Sprint and
12 Verizon have blocked their users’ access to the alt.binaries.* newsgroups.
13 Defendants’ ability to generate monthly subscriptions and revenues is based
14 almost exclusively on the demand for pirated copyrighted works contained in the
15 alt.binaries* hierarchies.

16 27. Giganews claims that its service is “used by tens of millions of
17 people around the globe.”

18 28. Defendants are aware that they are illegally copying, reproducing,
19 distributing, displaying, and selling massive quantities of infringing materials
20 because they do not own the rights to any of the materials. Moreover, the
21 alt.binaries* newsgroups are widely-known as sources of infringing copyrighted
22 materials and a cursory review of any of the newsgroups in this category would
23 reveal obviously-infringing works, such as newly-released Hollywood movies.
24 Defendants are also aware that the USENET no longer has any significant
25 legitimate application and virtually all of the activity on the USENET involves
26 the authorized copying and distribution of infringing materials. Because
27 Defendants charge membership fees, they are distributors and sellers of pirated
28 materials.

1 29. Defendants have in total, copied, distributed, displayed, and sold,
2 more than 165,000 Perfect 10 copyrighted images – roughly 15,000 Perfect 10
3 copyrighted images per website.

4 30. All of the Perfect 10 Copyrighted Works which Defendants provide
5 to consumers are used without authorization. Defendants engage in and
6 facilitate the massive and ongoing violations of Perfect 10's rights (as well as
7 third-party rights) even though Defendants are aware that Perfect 10 never
8 authorized or consented to the use by Defendants of the Perfect 10 Copyrighted
9 Works, the Perfect 10 Marks, or the Perfect 10 Rights of Publicity.

10 31. On March 25, 2009, Perfect 10 sent to Giganews approximately
11 800 Perfect 10 copyrighted images, a number of which displayed Perfect 10
12 copyright notices. Perfect 10 notified Giganews that Giganews was infringing a
13 vast collection of third party copyright works, Perfect 10 rights of publicity, and
14 Perfect 10 copyrighted works. Giganews wrote back claiming that it could not
15 find the allegedly infringing images based on that notice, which was simply not
16 correct. Giganews could have found each and every one of those images by
17 using its own search function to search for the image identifiers provided with
18 Perfect 10's notice. Once it found an infringing Perfect 10 image in a particular
19 group of such images (called an "article"), it could have blocked other Perfect 10
20 images displaying Perfect 10 copyright notices in that same group, but failed to
21 do so. Six months later, Giganews was still selling access to many thousands of
22 Perfect 10 copyrighted images that display Perfect 10 copyright notices.

23 32. On August 11, 2010, Perfect 10 sent to Giganews examples of
24 obviously infringing episodes of the TV series America Idol, Big Bang Theory,
25 CSI Miami, and How I Met Your Mother. Perfect 10 explained to Giganews
26 that such materials were obviously infringing and that Perfect 10 could not
27 compete with entities like Giganews, which steal and sell massive quantities of
28 obviously copyrighted works, in competition against Perfect 10, who pays for

1 materials it sells. Nevertheless, Giganews has continued to store, copy,
2 distribute, and sell access to massive quantities of similar infringing materials.

3 **FIRST CLAIM FOR RELIEF**

4 **(Copyright Infringement)**

5 **Against All Defendants**

6 33. Perfect 10 re-avers and incorporates herein by reference each and
7 every averment of paragraphs 1 through 32 above as though fully set forth
8 herein.

9 34. Perfect 10 is the owner of all right, title, and interest to each of the
10 Perfect 10 Copyrighted Works. Perfect 10 has registered its works with the
11 United States Copyright Office. Perfect 10 has been issued United States
12 copyright certificates some of which are listed on Exhibit 1, attached hereto.

13 35. Each of the Perfect 10 Copyrighted Works consists of material
14 original with Perfect 10 and each is copyrightable subject matter.

15 36. Defendants have copied, reproduced, distributed, adapted, and/or
16 publicly displayed the Perfect 10 Copyrighted Works without the consent or
17 authority of Perfect 10, thereby directly infringing Perfect 10's copyrights. A
18 sample of the Perfect 10 Copyrighted Works infringed by Defendants is included
19 as Exhibit 2.

20 37. Defendants' conduct constitutes infringement of Perfect 10's
21 copyrights and exclusive rights under copyright in the Perfect 10 Copyrighted
22 Works in violation of Sections 106 and 501, et. seq. of the United States
23 Copyright Act, 17 U.S.C. §§ 106 and 501.

24 38. Defendants have induced, caused, and/or materially contributed to
25 unauthorized copying, reproduction, adaptation, public display, and/or
26 distribution of the Perfect 10 Copyrighted Works.

27 39. Defendants' conduct constitutes contributory infringement of
28 Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10

1 Copyrighted Works.

2 40. Defendants have directly profited from the infringement of Perfect
3 10's copyrighted works, and possess the right and ability to stop the sale of those
4 works to their customers because they control every aspect of the copying,
5 distribution, and sale of the pirated materials that are stored on their servers.

6 41. Defendants' conduct constitutes vicarious infringement of Perfect
7 10's copyrights and exclusive rights under copyright in the Perfect 10
8 Copyrighted Works.

9 42. The infringement of Perfect 10's rights in and to each of the Perfect
10 10 Copyrighted Works constitutes a separate and distinct act of infringement.

11 43. The acts of infringement by Defendants have been willful,
12 intentional, and purposeful, in reckless disregard of and with indifference to the
13 rights of Perfect 10.

14 44. As a direct and proximate result of the infringements by Defendants
15 of Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10
16 Copyrighted Works, Perfect 10 is entitled to its actual damages and Defendants'
17 profits pursuant to 17 U.S.C. § 504(b).

18 45. Alternatively, Perfect 10 is entitled to statutory damages, pursuant
19 to 17 U.S.C. § 504(c).

20 46. Defendants' conduct is causing and, unless enjoined and restrained
21 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
22 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
23 law. Pursuant to 17 U.S.C. § 502, Perfect 10 is entitled to injunctive relief
24 prohibiting further infringements of Perfect 10's copyrights.

25 47. Perfect 10 further is entitled to its attorneys' fees and costs pursuant
26 to 17 U.S.C. § 505.

27

28

SECOND CLAIM FOR RELIEF

(Trademark Infringement)

Against All Defendants

48. Perfect 10 re-avers and incorporates herein by reference each and every averment of paragraphs 1 through 47 above as though fully set forth herein.

49. Perfect 10 is the owner of the Perfect 10 Marks, including the registered trademark/service marks PERFECT 10, PERFECT10.COM, and P10. The United States trademark/service mark registrations for PERFECT 10, PERFECT10.COM, and P10 include Registration Nos. 2,202,643, 2,235,145, 2,573,998, 2,709,583, and 3,094,437 for, among other goods and services, entertainment services in the nature of adult entertainment and beauty contests provided via a global computer network; entertainment services in the nature of beauty contests; and magazines featuring adult entertainment, beauty contests, pictures of female models, interviews, fiction, and articles on human relations, sports, entertainment, lifestyles, fitness, and calendars and unmounted photographs.

50. The Perfect 10 Marks have been continuously used in commerce by Perfect 10 and its predecessors, and are widely known throughout the United States. Three of Perfect 10's registered trademarks, registration numbers 2235145, 2202643, and 2573998 have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. Section 1065.

51. Perfect 10 has spent millions of dollars promoting and advertising the Perfect 10 Marks and products and services bearing the Perfect 10 Marks, and has marketed and sold millions of dollars of products and services under the Perfect 10 Marks.

52. As a direct result of the aforementioned use, promotion, and advertisement of the Perfect 10 Marks, Perfect 10 has built up and now owns

1 valuable goodwill symbolized by the Perfect 10 Marks.

2 53. As a direct result of the care and skill exercised by Perfect 10 over
3 the nature and quality of goods and services sold under the Perfect 10 Marks and
4 the extensive promotion, advertising, sale, and public acceptance thereof, the
5 Perfect 10 Marks have become known as a symbol of the goodwill that Perfect
6 10 has created throughout the United States and elsewhere by selling products
7 and services of high quality and by fairly and honorably dealing with the trade
8 and public in the sale of these products and services.

9 54. Defendants infringe Perfect 10 trademarks by providing lists of
10 titles containing such marks when a user searches for one of Perfect 10's
11 copyrighted works. This constitutes infringement of the Perfect 10 Marks in
12 violation of Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114 and 1125.
13 When Defendants provide lists of titles that contain "Perfect 10," "P10," or other
14 Perfect 10 trademarks, it is likely to create consumer confusion as to the
15 affiliation, connection, or association of Perfect 10 and the Defendants and as to
16 the origin, sponsorship and approval of the materials.

17 55. Defendants' conduct constitutes contributory infringement of the
18 Perfect 10 Marks.

19 56. Defendants' conduct constitutes vicarious infringement of the
20 Perfect 10 Marks.

21 57. Defendants' conduct has been and is willful and deliberate.

22 58. Perfect 10 is entitled to recover all damages sustained as a result of
23 Defendants' unlawful conduct, including (a) Defendants' profits, (b) Perfect 10's
24 damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable attorneys'
25 fees.

26 59. Defendants' conduct is causing and, unless enjoined and restrained
27 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
28 cannot fully be compensated in money. Perfect 10 has no adequate remedy at

1 law. Perfect 10 is entitled to injunctive relief prohibiting further infringements
2 of the Perfect 10 Marks.

3 **THIRD CLAIM FOR RELIEF**

4 **(Trademark Dilution)**

5 **Against All Defendants**

6 60. Perfect 10 re-avers and incorporates herein by reference each and
7 every averment of paragraphs 1 through 59 above as though fully set forth
8 herein.

9 61. The Perfect 10 Marks have become and at all relevant times have
10 been “famous” within the meaning of 15 U.S.C. § 1125(c).

11 62. In response to searches on Perfect 10’s marks, Defendant’s provide
12 their users with files or groups of images whose names contain those marks,
13 which either intermingle Perfect 10’s high-quality images with images of poor
14 quality or of an offensive or illegal nature owned by third parties, or provide
15 solely low quality explicit images that have nothing to do with Perfect 10. The
16 acts of Defendants averred herein have lessened the capacity of the Perfect 10
17 Marks to identify and distinguish Perfect 10’s services and products from
18 Defendants sites, have tarnished the valuable image and reputation associated
19 with the Perfect 10 Marks, and have created an undesirable, unwholesome, or
20 unsavory mental association with Perfect 10 and the Perfect 10 Marks, damaging
21 Perfect 10’s goodwill and disparaging Perfect 10’s rights in the Perfect 10
22 Marks. Defendants’ acts and conduct are in violation of 15 U.S.C. § 1125(c).
23 Defendants have willfully intended to trade on Perfect 10’s reputation and/or to
24 cause dilution of the Perfect 10 Marks. Accordingly, Perfect 10 is entitled to
25 recover all damages sustained as a result of Defendants’ unlawful conduct,
26 including (a) Defendants’ profits, (b) Perfect 10’s damages, (c) treble those
27 amounts, (d) costs of suit, and (e) reasonable attorneys’ fees.

28 63. Defendants’ conduct is causing and, unless enjoined and restrained

1 by this Court, will continue to cause, Perfect 10 great and irreparable injury that
2 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
3 law. Perfect 10 is entitled to injunctive relief prohibiting further dilution and
4 disparagement of the Perfect 10 Marks.

5 **FOURTH CLAIM FOR RELIEF**
6 **(Violation of California Unfair Competition Law**
7 **– Cal. Bus. & Prof. Code §§ 17200, et seq.)**
8 **Against All Defendants**

9 64. Perfect 10 re-avers and incorporates herein by reference each and
10 every averment of paragraphs 1 through 32 and 48 through 63 above as though
11 fully set forth herein.

12 65. Without authorization or license, Defendants have commercially
13 exploited and used millions of marketable adult-oriented photographs and
14 likenesses, which range from tame to explicit. Through these photographs,
15 which make Defendants content providers for adult photographs of every type
16 and quality, as well as the use of the names of the persons depicted, Defendants
17 are unlawfully exploiting the publicity rights and trademark rights of Perfect 10,
18 as well as the publicity rights, trademark rights of third-parties. Defendants are
19 also selling without authorization, in competition with Perfect 10, billions of
20 dollars in stolen songs, full-length movies, and even computer software. This
21 conduct enables Defendants to compete directly and unfairly with Perfect 10 by,
22 among other things, offering for free millions of valuable photographs and
23 likenesses, and thousands of songs, and full length movies, as well as computer
24 software. The costs to license these materials are so enormous (at least hundreds
25 of millions of dollars), so as to make it impossible for Perfect 10 to legally
26 compete.

27 66. Defendants are infringing and diluting Perfect 10's and other
28 parties' trademarks, as alleged herein.

1 67. Defendants are misleading consumers into believing that their
2 multiple websites offer different materials so as to sell more memberships.
3 Neither Livewire nor Giganews discloses that infringing movies, songs,
4 computer software, and images offered by their various websites are essentially
5 the same, hoping that the consumer will buy multiple memberships without
6 realizing that they are making multiple payments for the same infringing
7 materials.

8 68. Defendants' acts and practices alleged herein constitute unfair,
9 unlawful, and fraudulent business acts and practices within the meaning of
10 California Bus. & Prof. Code §§ 17200, et. seq.

11 69. Defendants engaged in unfair business acts and practices in that the
12 harm caused by its conduct outweighs any utility of such conduct and such
13 conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and
14 offensive, and cause substantial injury to Perfect 10.

15 70. All of the above is causing direct injury to Perfect 10's business.
16 Perfect 10 has suffered injury in fact and has lost money and property as a result
17 of such unfair competition.

18 71. Perfect 10 seeks an injunction prohibiting Defendants from further
19 engaging in such unfair business acts and practices and for an order of restitution
20 and/or disgorgement.

21 **FIFTH CLAIM FOR RELIEF**

22 **(Violation of Rights of Publicity –**

23 **Cal. Civ. Code § 3344 and Common-law Right of Publicity)**

24 **Against All Defendants**

25 72. Perfect 10 re-avers and incorporates herein by reference each and
26 every averment of paragraphs 1 through 32 and 48 through 71 above as though
27 fully set forth herein.

28 73. Perfect 10 is the owner of the Perfect 10 Rights of Publicity, as the

1 assignee of publicity rights, including in the names, photographs, and likenesses,
2 of certain Perfect 10 models (“the Perfect 10 Rights of Publicity”). Largely as a
3 result of the efforts and expenditures of Perfect 10, the names, photographs, and
4 likenesses of these Perfect 10 models have received widespread recognition,
5 particularly among the consumers and potential consumers of adult
6 entertainment products.

7 74. Defendants have infringed the Perfect 10 Rights of Publicity by
8 providing lists of the models’ names and by returning images that are not of the
9 model (including sexually explicit, defamatory images) when a user searches for
10 images of the models. Defendants have knowingly used the Perfect 10 Rights of
11 Publicity, without the prior consent of Perfect 10 or any authorized party.

12 75. By reason of Defendants’ acts and conduct, Perfect 10 has suffered
13 substantial damage to its business in the form of diversion of trade, loss of
14 profits, injury to goodwill and reputation, and a dilution of the value of its
15 exclusive rights of publicity, all of which are not yet fully ascertainable. Perfect
16 10 is entitled to recover (a) its actual damages, (b) profits of the infringer, (c)
17 statutory damages, (d) punitive damages, and (e) attorneys’ fees and costs.

18 76. Defendants’ conduct is causing and, unless enjoined and restrained
19 by this Court, will continue to cause Perfect 10 great and irreparable injury that
20 cannot fully be compensated in money. Perfect 10 has no adequate remedy at
21 law. Perfect 10 is entitled to injunctive relief prohibiting further infringements
22 of its rights of publicity.

23 77. Perfect 10 is informed and believes, and on that basis avers, that the
24 aforementioned acts of Defendants were willful, oppressive, fraudulent, or
25 malicious, and Perfect 10 therefore is entitled to punitive damages.

26 78. Perfect 10 further is entitled to its attorneys’ fees and statutory
27 damages pursuant to California Civil Code § 3344(a) and other laws.
28

PRAYER FOR RELIEF

WHEREFORE, plaintiff Perfect 10 prays for judgment against Defendants, and each of the Doe Defendants, jointly and severally, as follows:

1. That Defendants and their officers, agents, servants, employees, representatives, successors, and assigns, and all persons in active concert or participation with them, be temporarily, preliminarily and permanently enjoined from:

- a. copying, reproducing, distributing, adapting, selling access to, or publicly displaying the Perfect 10 Copyrighted Works;
- b. posting Perfect 10 copyrighted photographs on the internet;
- c. using, authorizing the use of, copying, reproducing or imitating the Perfect 10 Marks, or any confusingly similar or colorable imitation thereof;
- d. violating the Perfect 10 Rights of Publicity;
- e. competing unfairly with Perfect 10 by violating the publicity rights of Perfect 10 and others, and by infringing trademark rights; and
- f. inducing, causing, materially contributing to, and profiting from the foregoing acts committed by others.

2. That Defendants be ordered to destroy all photographs, documents, and other items, electronic or otherwise, in its possession, custody, or control, that infringe the copyrights, trademarks, or rights of publicity of Perfect 10.

3. For an order of restitution and/or disgorgement in the amount of the benefit to Defendants by reason of their unlawful conduct, in an amount to be proven at trial, but not less than \$5 million.

4. For Perfect 10's actual damages, in an amount to be proven at trial, but not less than \$5 million.

5. For a full accounting of all profits, income, receipts, or other

1 benefits derived by Defendants as a result of its unlawful conduct.

2 6. For statutory damages under the Copyright Act, in an amount to be
3 proven at trial, but not less than \$5 million.

4 7. For treble damages under the Lanham Act, in an amount to be
5 proven at trial, but not less than \$5 million.

6 8. For statutory damages under California Civil Code Section 3344, in
7 an amount to be proven at trial, but not less than \$5 million.

8 9. For the imposition of a constructive trust.

9 10. For punitive damages.

10 11. For attorneys' fees and full costs.

11 12. For such other and further relief as this Court deems just and
12 appropriate.

13 Dated: April 28, 2011

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP.

15
16 By: /s/ Eric J. Benink

Eric J. Benink

Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Perfect 10, Inc. hereby demands a jury trial pursuant to Rule
3 38(b) of the Federal Rules of Civil Procedure.

4
5 Dated: April 28, 2011

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP

7 By: /s/ Eric J. Benink

8 Eric J. Benink
9 Attorney for Plaintiff